

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 438 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

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Versus

STATE OF GUJARAT

Appearance:

Shri A.J. PATEL, Advocate, for the Petitioner.

Shri T.H.SOMPURA, Assistant Government Pleader, for
Respondent No.1.

Shri B.G.PATEL, Advocate, for Respondent No.2.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/04/96

The order passed by and on behalf of the State Government (respondent No.1 herein) on 27th September 1985 under section 211 of the Bombay Land Revenue Code, 1879 (the Code for brief) is under challenge in this petition under Article 227 of the Constitution of India. Thereby respondent No.1 upset the order passed by the Deputy Collector at Valsad on 4th October 1983 granting permission under section 73-AA of the Code for sale of one parcel of land admeasuring 3 acres from survey No.523/524 admeasuring 5 acres 15 gunthas situated at Pardi in district Valsad (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was a new tenure land in the hands of respondent No.2 herein. He applied for permission under section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief) for its sale. By the order passed by the Assistant Collector at Valsad on 18th February 1982, such permission came to be granted on certain terms and conditions. Its copy is at Annexure-B to this petition. He, thereafter, applied for permission under section 65 of the Code for what is popularly known as its N.A.Use. By the order passed by the District Development Officer at Valsad on 28th May 1982, such permission came to be granted on certain terms and conditions. Its copy is at Annexure-A to this petition. Respondent No.2 thereafter wanted to sell the disputed land to the petitioner herein. Since respondent No.2 was a member of the scheduled tribe, he was required to obtain the necessary permission under section 73-AA of the Code. Apropos he made the necessary application for the purpose. By his order passed on 4th October 1983, the Deputy Collector at Valsad granted such permission on certain terms and conditions. Its copy is at Annexure-D to this petition. Pursuant thereto, respondent No.2 sold the disputed land to the petitioner herein by a registered sale deed executed on 11th October 1983. The necessary mutation entry was effected in the revenue records pertaining to the disputed land pursuant to the sale transaction. A copy of the mutation entry is at Annexure-E to this petition. It appears that the order at Annexure-B to this petition was carried in revision by and on behalf of respondent No.1 before the Gujarat Revenue Tribunal at Ahmedabad (the Tribunal for convenience). It came to be registered as Revision Application No.TEN. B.S.115 of 1984. It was heard along with the other allied matters. By its common decision rendered on 11th October 1984 in the aforesaid revisional

applications, the Tribunal inter alia rejected the revisional application against the order at Annexure-B to this petition. A copy of the aforesaid common decision of the Tribunal is at Annexure-C to this petition. It appears that the order at Annexure-D to this petition came to the notice of the concerned officer of respondent No.1. He appears not to have found it according to law. Its suo motu revision under section 211 of the Code was therefore contemplated. A show cause notice thereupon came to be issued to respondent No.2 on 30th April 1985 calling upon him to show cause why the order at Annexure-D to this petition should not be cancelled. A reply thereto was filed by and on his behalf on 10th May 1985. Its copy is at Annexure-F to this petition. Thereafter, by the order passed by and on behalf of respondent No.1 on 27th September 1985, the order at Annexure-D to this petition came to be set aside. A copy of the aforesaid order passed on 27th September 1985 is at Annexure-G to this petition. That aggrieved the present petitioner. He has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-G to this petition.

3. Learned Assistant Government Pleader Shri Sompura for respondent No.1 has raised a preliminary objection as to maintainability of this petition under Article 227 of the Constitution of India. At this stage, learned Advocate Shri A.J.Patel for the petitioner orally applies for conversion of this petition also under Article 226 of the Constitution of India. Such oral request is accepted on condition of payment of the deficit court fees, if any, within a fortnight from today.

4. The grievance voiced by the petitioner against the impugned order at Annexure-G to this petition is twofold. In the first place, according to learned Advocate Shri Patel for the petitioner, respondent No.1 could not have exercised its revisional powers under section 211 of the Code beyond the reasonable period of one year from the date of the order at Annexure-D to this petition. Secondly, runs the submission of learned Advocate Shri Patel for the petitioner, the impugned order could not have been passed without giving an opportunity of hearing to the petitioner, more particularly when in his reply at Annexure-F to this petition respondent No.2 clearly indicated that the sale of the disputed land was effected in favour of the petitioner.

5. The order at Annexure-D to this petition was

passed on 4th October 1983. The show cause notice for its revision under section 211 of the Code was issued nearly one and half years thereafter on 30th April 1985 as transpiring from the impugned order at Annexure-G to this petition. It is thus clear that the revisional powers under section 211 of the Code were sought to be exercised more than one year after the date of the order at Annexure-D to this petition.

6. In this connection, a reference deserves to be made to the binding Division Bench ruling of this court in the case of BHAGWANJI BAWANJI PATEL v. STATE OF GUJARAT reported in (1971) 12 Gujarat Law Reporter at page 156 as relied on by learned Advocate Shri Patel for the petitioner in support of his submission that the revisional powers under section 211 of the Code could not have been exercised beyond the reasonable period of one year. It has been held therein that the reasonable period during which the revisional powers under section 211 of the Code can be exercised would be one year from the date of the order or action in question. As pointed out hereinabove, the order at Annexure-D to this petition was passed on 4th October 1983. It was sought to be revised under section 211 of the Code by issuing the show cause notice on 30th April 1985. The show cause notice was thus issued nearly one and half years after the date of the order at Annexure-D to this petition. This cannot simply be permitted to be done in view of the aforesaid binding Division Bench ruling of this Court.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-G to this petition cannot be sustained in law and it has to be quashed and set aside. Since I am taking this view, I have not thought it fit to deal with the other contention urged before me by learned Advocate Shri Patel for the petitioner regarding absence of opportunity of hearing to be given to the petitioner before passing the impugned order at Annexure-G to this petition.

8. Before parting, I am inclined to observe that the impugned order at Annexure-G to this petition has been passed mainly on the ground that respondent No.2 was exploited qua the price of the land. Respondent No.2 is very much before this court and he has not chosen to raise any such contention. In fact, in his reply at Annexure-F to this petition, he has stated in eloquent terms that he was not exploited qua the price of the disputed land. In fact, a similar argument was advanced before the Tribunal in the revisional application against the order at Annexure-B to this petition and the Tribunal

has also in its decision at Annexure-C to this petition come to the conclusion that the price fixed for the land was quite just and proper and after the necessary inquiry in that regard. I think the author of the order at Annexure-G to this petition could not have bypassed the decision of the Tribunal at Annexure-C to this petition, more particularly when it was pointed out in the reply at Annexure-F to this petition. I think the author of the order at Annexure-G to this petition could not have sat in appeal over the decision of the Tribunal at Annexure-C to this petition in this fashion.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government on 27th September 1985 at Annexure-G to this petition is quashed and set aside. Consequently, the order passed by the Deputy Collector at Valsad on 4th October 1983 is restored. Rule is accordingly made absolute with no order as to costs.

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